

**2004 ANNUAL REPORT
OF
THE NORTH CAROLINA
JUDICIAL STANDARDS COMMISSION**

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CREATION AND ORGANIZATION

The Judicial Standards Commission (Commission) was created in 1973 by virtue of an amendment to Article IV, Section 17 of the Constitution of North Carolina which was proposed by the General Assembly (Session Laws 1971, c. 560) and approved by the voters in the general election on November 7, 1972. The primary effect of the amendment was to add a new subsection (2) to Section 17 which mandated the General Assembly to prescribe a procedure for removal of judges, both trial and appellate, in addition to impeachment and address and a procedure for censure of judges and justices.

In light of the mandate embodied by this amendment, the General Assembly enacted Article 30 of Chapter 7A of the General Statutes (Session Laws 1971, c. 590) and thereby established the Judicial Standards Commission, effective January 1, 1973, and conditioned upon the adoption of the amendment to Article IV, Section 17.

The statutory provisions relating to the Commission, G.S. 7A-375, *et seq.*, describe its composition and the terms of members, set forth the grounds for censure or removal, established certain procedural guidelines and standards for proceedings concerning a justice or judge, and authorize the employment of a staff.

The membership of the Commission consists of a court of appeals judge, a superior court judge, and a district court judge, each appointed by the Chief Justice of the Supreme Court; two members of the Bar, elected by the Council of The North Carolina State Bar; and two citizens who are neither judges, active or retired, nor attorneys, appointed by the Governor. The court of appeals judge serves as chairperson of the Commission.

Commission members serve six-year terms, except that one judge, one attorney, and one citizen were initially appointed for three-year terms in order to achieve overlapping. Once a Commission member has served a full six-year term, he or she is ineligible for reappointment. Each Commission member is engaged in full-time employment in his or her primary business or profession. They serve without pay, except for travel and subsistence expenses and nominal per diem for members who are not judges, attend an average of six meetings annually to handle the various communications the Commission receives from around the State, and sit from time to time as required for hearings on charges against judges. A list of current and past members of the Commission is included as Appendix A to this report.

Prior to 1977 the Commission had no staff. The chairperson and secretary carried out the duties which ordinarily would be performed by an administrative staff, and investigative and prosecutorial services were obtained from other agencies such as the State Bureau of Investigation, the Attorney General, and The North Carolina State Bar. On January 1, 1977, however, a grant from the Law Enforcement Assistance Administration was implemented which provided funds to establish a permanent staff consisting of an executive secretary, an investigator, and a secretary, and on July 1, 1979, the cost of this program was assumed by the State.

In the opinion of the Commission, particularly those members who served prior to the establishment of a staff, the addition of the staff facilitated the Commission in the performance of its disciplinary responsibilities. It also increased the "visibility" of the Commission to the public. Rather than having investigations performed by personnel from other agencies and having no office or telephone listing for the Commission, the Commission centralized such activities in its own staff, thereby enhancing its identity and accessibility.

PURPOSE AND FUNCTION

The Judicial Standards Commission exists as the appropriate agency for the review of complaints "concerning the qualifications or conduct of any justice or judge of the General Court of Justice." G.S. 7A-377(a). It receives and investigates complaints of judicial misconduct or disability, institutes formal proceedings, conducts hearings, and recommends appropriate disciplinary action to the North Carolina Supreme Court or the North Carolina Court of Appeals. The Commission itself can neither censure nor remove. It functions to aid in determining whether a justice or judge is unfit or unsuitable, and it is for the court to actually assess the disciplinary sanctions provided in G.S. 7A-376. *In re Nowell*, 293 N.C. 235, 237 S.E. 2d 246 (1977).

The grounds upon which a Commission recommendation can be made, following an adversary hearing affording the respondent certain due process rights, are set forth in N.C. Const., Art. IV, § 17(2), G.S. 7A-376, and Commission Rule 7. The Commission can recommend the censure or removal of a justice or judge for:

- 1) willful misconduct in office;
- 2) willful and persistent failure to perform duties;
- 3) habitual intemperance;
- 4) conviction of a crime involving moral turpitude; and
- 5) conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

In addition, the Commission can recommend the removal of any justice or judge for mental or physical incapacity which interferes with the performance of judicial duties and is, or is likely to become, permanent.

In order to provide justices and judges with notice of what conduct is expected of them, the Supreme Court, as authorized by the General Assembly in G.S. 7A-10.1, adopted the North Carolina Code of Judicial Conduct. The Code is consulted by the Commission as a guide to the meaning of G.S. 7A-376 providing the grounds for a recommendation of censure or removal. In addition, the decisions of the Supreme Court with respect to Commission recommendations may be consulted to provide guidance as to what actions constitute improper judicial conduct warranting censure or removal. A list of those decisions is provided as Appendix B to this report.

The purpose of the Commission has been repeatedly stated by the Supreme Court, but was first voiced by Justice Exum in *In re Crutchfield*, 289 N.C. 597, 602, 223 S.E. 2d 822, 825 (1975):

"[A proceeding before the Judicial Standards Commission] is neither criminal nor civil in nature. It is an inquiry into the conduct of a judicial officer, the purpose of which is not primarily to punish any individual but to maintain due and proper administration of justice in our State's courts, public confidence in its judicial system, and the honor and integrity of its judges."

It is also hoped that the existence and activities of the Commission will create a greater awareness of proper judicial conduct on the part of the judges themselves.

RULES AND PROCEDURE

At its first meeting on February 2, 1973, the Commission adopted a set of 20 rules to govern its operation; and at its meetings on December 12, 1975, January 27, 1978, October 5, 1990, and September 6, 1991, the Commission adopted amendments to these rules. Authority for the Commission's promulgation of its own rules of procedure is granted by G.S. 7A-377(a). In addition to providing a framework for the orderly disposition of complaints against members of the judiciary, the rules also incorporate safeguards to assure that proceedings before it comply with due process requirements.

Proceedings before the Commission are triggered by the receipt of a written complaint. Once the complaint has been appropriately indexed and acknowledged, it is placed on the agenda of matters for Commission review. Upon initial review, the Commission determines whether it has personal jurisdiction and subject matter jurisdiction, *i.e.*, whether the allegations concern a justice or judge, and whether the alleged facts indicate that the justice or judge may be guilty of one of the grounds set forth in G.S. 7A-376.

If a complaint is determined to contain factual allegations of judicial misconduct or incapacity, the Commission may then order a preliminary investigation. The Commission may also undertake an investigation on its own motion where it receives information from a source appearing to so warrant.

At this point the respondent judge is notified that a preliminary investigation has been ordered. The respondent is also advised as to the nature of the charge and is afforded an opportunity to present such matters as he or she may choose. Based on the information presented in the preliminary investigative report and any explanatory material submitted by the respondent, the Commission determines whether formal proceedings should be instituted. If it determines that no further action is warranted, the respondent is so notified and the case is closed.

On the other hand, if the Commission determines that formal proceedings should be instituted, the respondent is served with a notice of proceedings which identifies the complainant, specifies the charge or charges in ordinary and concise language, and affirms the respondent's right to file a written, verified answer to the charges. The respondent is concurrently served with a copy of the verified complaint which sets forth the alleged facts upon which the charges contained in the notice are based.

Following receipt of an answer, or upon expiration of the time allowed for filing, the Commission schedules a hearing on the charges. The Commission's Special Counsel presents evidence in support of the charges at the hearing. The respondent has the right to representation of counsel, to introduce evidence, to examine and cross-examine witnesses, and to the issuance of subpoenas for attendance of witnesses or to produce books, papers, and other evidentiary matter. The hearing is recorded by a court reporter, and testimony at the hearing is videotaped as a result of *In re Hayes*, 353 N.C. 511, 546 S.E. 2d 376 (2001).

At the conclusion of the hearing, the Commission determines whether to recommend censure or removal, a determination requiring the affirmative vote of five members. If a recommendation of censure or removal is approved, a transcript of the proceedings must be prepared and time allowed for settlement of any objections the respondent might have to it. Upon settlement of the record, a transcript of proceedings, findings of facts, conclusions of law, and recommendation are filed with the Clerk of the Supreme Court or Court of Appeals, as appropriate.

Upon review, the recommendation of the Commission is not binding, and the evidence on both sides will be considered to determine whether the Commission's findings of fact are supported by clear and convincing evidence. It is for the Supreme Court or the Court of Appeals to act as "the adjudicatory body to provide the final scrutiny and make final judgment whether to censure, remove, remand or dismiss the proceeding." *In re Hardy*, 294 N.C. 90, 97, 240 S.E. 2d 367, 372 (1978).

It should be noted that prior to October 1, 1990, except for the Commission's recommendation and the record filed in support thereof, all papers filed with and proceedings before the Commission were considered confidential. Effective on that date, however, G.S. 7A-377 provides that confidentiality ceases when formal proceedings are instituted. Confidentiality is retained in the preliminary stages to encourage complainants to express their concerns without fear of reprisal or intimidation and to protect a judge's reputation and the integrity of the judicial process from unfounded or frivolous complaints.

It should also be noted that prior to September 6, 1991, the Commission occasionally utilized a disciplinary measure known as a reprimand in addition to a recommendation of censure or removal. The reprimand was a mechanism administratively developed for dealing with inquiries wherein the conduct involved was improper but not of such a nature as would warrant censure or removal. Such a determination could be made at any stage of Commission proceedings after completion of a preliminary investigation. Issuance of a reprimand effectively terminated proceedings but also was recorded in the respondent's case file thereby putting the respondent on notice of the Commission's view of such conduct and the consequences which could ensue any repetition. Since the establishment of the Commission in 1973, 18 reprimands had been issued.

Effective September 6, 1991, the Commission formalized a policy decision to issue no more private reprimands and adopted a new Rule 8 providing for the issuance of private admonitions. A private admonition may be issued in instances which disclose conduct by a judge which requires attention but is not of such nature as would warrant a recommendation of censure or removal, and it cannot be issued once formal proceedings against a judge have been instituted. Such a private admonition does not bar future proceedings concerning similar conduct and may be referred to or considered by the Commission in subsequent proceedings concerning the recipient judge.

ACTIVITIES IN 2004

Meetings--During this calendar year, the Commission held regular business meetings on the following dates to consider various matters:

March 26, 2004
May 14, 2004
July 9, 2004
September 9, 2004
October 28, 2004
December 10, 2004

In addition to the above meetings, the Commission also conducted four hearings in formal proceedings regarding nine inquiries.

Caseload--A complaint or other information against a member of the judiciary, whether filed with the Commission or initiated by the Commission acting on its own motion, is designated as an "Inquiry Concerning a Judge." 30 such inquiries were pending at the beginning of 2003:

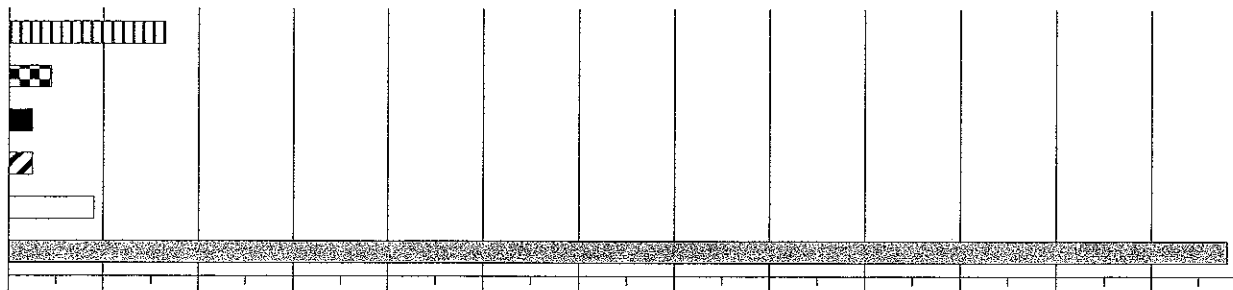
12 inquiries awaiting initial review or receipt of additional information, 15 inquiries involving preliminary investigations, and 1 pending hearing involving 3 inquiries. During the year, 296 new inquiries were filed or initiated by the Commission on its own motion. Preliminary investigations were ordered in 8 inquiries. The Commission filed formal proceedings in 7 inquiries. As indicated below, 33 matters were left pending at the end of 2004: 26 inquiries awaiting initial review or the receipt of additional information, 6 inquiries involving preliminary investigations, and 1 inquiry in which formal proceedings were filed, but was pending a hearing.







CASELOAD 2004

Matters pending 1/1/03	30
2004 Inquiries	296
Total Workload	326
Inquiries Disposed in 2004	293
Matters Pending 12/31/04	33

Disposition information is more fully presented in the chart below which indicates that as in previous years, the majority of inquiries were terminated after initial review by the Commission. Of the 293 inquiries disposed of during the year, 256 were dismissed after initial review, 18 were dismissed after initial review with a letter of caution, 5 were dismissed after preliminary investigations, and 5 were dismissed after preliminary investigations with letters of caution. Four hearings were conducted by the Commission in 2004 addressing formal proceedings filed in 9 inquiries. As a result of these hearing, the Commission filed 1 recommendation for censure with the North Carolina Supreme Court with the recommendation to be filed in early 2005 in the other matter. Both matters either are or will be pending review by the Court in 2005. Two hearings concluded with no recommendation being filed with the North Carolina Supreme Court. The Commission's recommendation for censure in *In Re Braswell*, 357 N.C. 358 N.C. 721, 600 S.E. 2d 849 (2004) was adopted by the North Carolina Supreme Court, while the Commission's recommendation for censure in *In Re Brown*, 358 N.C. 711, 599 S.E. 2d 502 (2004) was rejected with no order of discipline by the Court.

INQUIRY DISPOSITION 2004

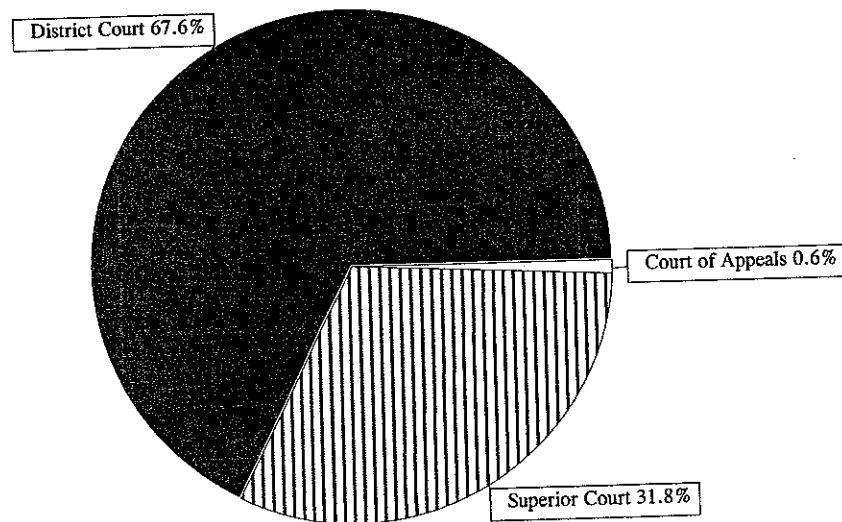


-  Pending - 33
-  Hearing Conducted - 9
-  Dismissed after Preliminary Investigation with Letter of Caution - 5
-  Dismissed After Preliminary Investigation - 5
-  Dismissed after Initial Review with Letter of Caution - 18
-  Dismissed After Initial Review - 256

The following provides inquiry profile data by category of judge. Some inquiries involved more than one judge.

CATEGORIES OF RESPONDENT JUDGES

District Court	221
Superior Court	104
Court of Appeals	2
Supreme Court	0
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*TOTAL	327

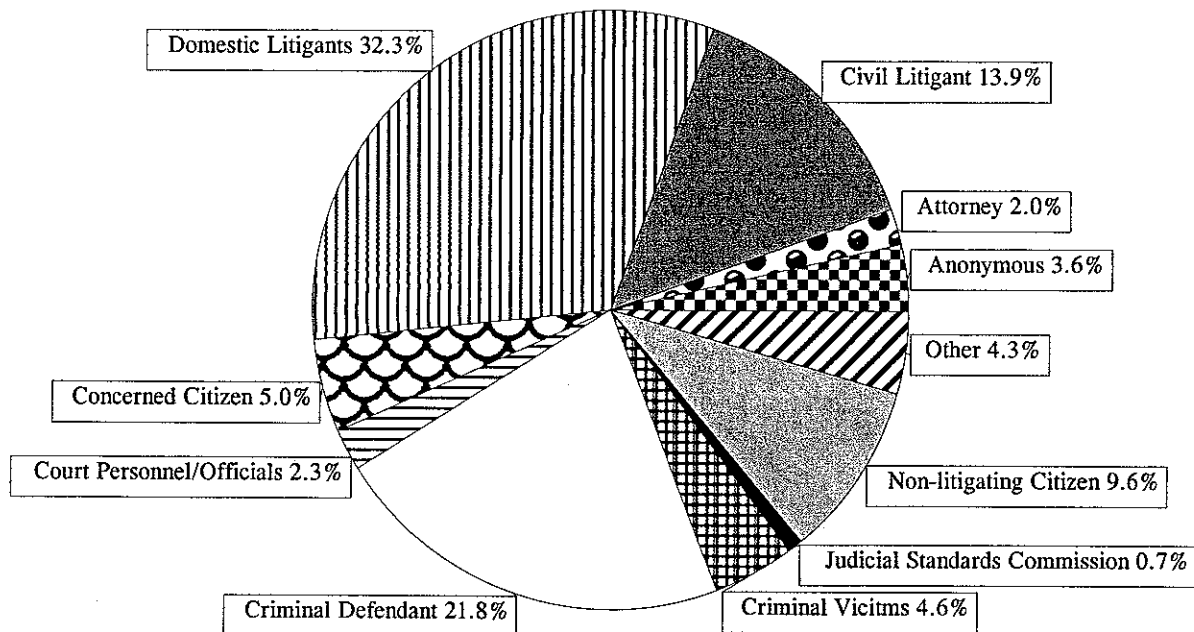


The following provides inquiry data profile by the source of the inquiry filed with the Commission in 2004. Some inquiries had more than one complainant.

SOURCES OF INQUIRIES

Anonymous	11
Attorneys	6
Civil Litigants	42
Domestic Litigants	98
Concerned Citizens	15
Court Personnel/Officials	7
Criminal Defendants	66
Criminal Victims	14
Judicial Standards Commission	2
Non-litigating citizen**	29
Other	13
<hr/>	
TOTAL	303

** includes witnesses, friends and family of litigants



HISTORICAL PERSPECTIVE

Cumulative data on activities of the Judicial Standards Commission since its establishment in 1973 show that the Commission has received 3,898 "Inquiries Concerning a Judge" in its history, 33 of which were still pending at the end of 2004.

Of the 3,898 inquiries filed with the Commission since its establishment, 3,403 were dismissed after initial review by the Commission. The Commission ordered preliminary investigations into 390 inquiries.

226* preliminary investigations were concluded at the investigative stage; 12* formal proceedings were concluded prior to hearing; 15* formal proceedings were concluded after a hearing without a recommendation filed with the North Carolina Supreme Court; and 43* formal proceedings resulted in 34* recommendations of censure and 9* recommendations of removal filed with the Court. One formal proceeding involving three inquiries was pending review by the North Carolina Supreme Court. One formal proceeding involving two inquiries had been heard by the Commission, but the recommendation had not yet been filed with the Court at year end. One formal proceeding involving a single inquiry was pending a hearing at year end.

Of the 34* recommendations of censure filed, the North Carolina Supreme Court has accepted 28, rejected 5, with 1 pending before the Court at the year's end. Of the 9 recommendations of removal filed, the North Carolina Supreme Court has accepted 5, modified 1 to a censure, remanded 2 for rehearing, and rejected 1.

The Commission has issued 18* private reprimands, 102* private admonitions, and 30* letters of caution. 17 inquiries have been terminated because the respondent vacated office.

* each may include multiple inquiries

Inquiries Filed 3898		Investigations Ordered 390*		Formal Proceedings Ordered 75*	
Dismissed After Initial Review	3403	No Further Action	147	No Further Action	1
Private Admonition	60	Office Vacated	15	Office Vacated	1
Letter of Caution	19	Private Admonition	47	Reprimand	10
Investigation Ordered	390	Reprimand	6	Hearing Held	59
Pending 12/31/03	26	Letter of Caution	11	Pending	1
		Formal Proceedings	75		
		Pending	6		

Hearings Conducted 59*		Recommendations Filed 43*	
No Further Action	12	Censure	34
Office Vacated	1	Removal	9
Reprimand	2		
Recommendation Filed	43		
Recommendation Pending	1		

* each may include multiple inquiries

FIVE YEAR COMPARATIVE ANALYSIS

Year	Inquiries Received	NFA After IR	PI Ordered	NFA After PI	LC/PA	FP Filed	Hearing	Recommendation Filed
2004	296	256	8	5	23	7	4	2
2003	275	258	18	7	7	3	3	3
2002	247	227	20	11	7	7	7	2
2001	208	192	20	5	9	2	2	2
2000	186	149	12	6	13	2	2	1
Total	1212	1082	78	34	59	21	18	10
Avg	242.4	216.4	15.6	6.8	11.8	4.2	3.6	2

NFA - No Further Action

IR - Initial Review

PI - Preliminary Investigation

FP - Formal Proceedings

LC / PA - Letter of Caution / Private Admonition

Numbers represent total inquiries in each category except Hearing and Recommendation Filed, both of which may include multiple inquiries each.

APPENDIX A

**PAST AND PRESENT MEMBERS
OF THE
JUDICIAL STANDARDS COMMISSION**

Judges Appointed by the Chief Justice

<u>Court of Appeals</u>	<u>Superior Court</u>	<u>District Court</u>
Judge Walter E. Brock	Judge George M. Fountain	Judge E. D. Kuykendall, Jr.
Judge Edward B. Clark	Judge W. Douglas Albright	Judge C. Walter Allen
Judge Gerald Arnold	Judge James M. Long	Judge L. T. Hammond, Jr.
Judge Clifton E. Johnson	Judge Robert D. Lewis	Judge W. S. Harris, Jr.
Judge Sidney S. Eagles, Jr.	Judge Marvin K. Gray	Judge A. Elizabeth Keever
Judge Jack L. Cozort	Judge James L. Baker, Jr.	*Judge Joyce A. Hamilton
Judge John B. Lewis, Jr.	*Judge Richard D. Boner	
*Judge John C. Martin		

Citizens Appointed by the Governor

Mr. Marvin B. Koonce, Jr.
Mrs. George L. Hundley
Ms. N. Susan Whittington
Mrs. Veatrice C. Davis
Ms. Pamela S. Gaither
Mr. Albert E. Partridge, Jr.
Mrs. Margaret H. Almond
Mr. Melvin C. Swann, Jr.
Mr. Roland W. Leary
*Mr. James L. Mebane
*Mr. T. Ray Warren

Attorneys Elected by the NC State Bar Council

Mr. Emerson T. Sanders
Mr. Harold K. Bennett
Mr. Robert G. Sanders
Mr. Jerome B. Clark, Jr.
Mr. E. K. Powe
Mr. Rivers D. Johnson, Jr.
Mr. Louis J. Fisher, Jr.
Mr. William K. Davis
Mr. Z. Creighton Brinson
Mr. Charles M. Davis
*Mr. Ronald Barbee
*Mr. William O. King

APPENDIX B

**SUPREME COURT OPINIONS
REGARDING RECOMMENDATIONS
OF THE
JUDICIAL STANDARDS COMMISSION**

In re Crutchfield, 289 N.C. 597, 223 S.E. 2d 822 (1975)
In re Edens, 290 N.C. 299, 226 S.E. 2d 5 (1976)
In re Stuhl, 292 N.C. 379, 233 S.E. 2d 562 (1977)
In re Nowell, 293 N.C. 235, 237 S.E. 2d 246 (1977)
In re Hardy, 294 N.C. 90, 240 S.E. 2d 367 (1978)
In re Martin, 295 N.C. 291, 245 S.E. 2d 766 (1978)
In re Peoples, 296 N.C. 109, 250 S.E. 2d 890 (1978)
In re Martin 302 N.C. 299, 275 S.E. 2d 412 (1981)
In re Hunt, 308 N.C. 328, 302 S.E. 2d 235 (1983)
In re Kivett, 309 N.C. 635, 309 S.E. 2d 422 (1983)
In re Wright, 313 N.C. 495, 329 S.E. 2d 668 (1985)
In re Griffin, 320 N.C. 163, 357 S.E. 2d 682 (1987)
In re Bullock, 324 N.C. 320, 377 S.E. 2d 743 (1989)
In re Hair, 324 N.C. 324, 377 S.E. 2d 749 (1989)
In re Greene, 328 N.C. 639, 403 S.E. 2d 257 (1991)
In re Bullock, 328 N.C. 712, 403 S.E. 2d 264 (1991)
In re Sherrill, 328 N.C. 719, 403 S.E. 2d 255 (1991)
In re Harrell, 331 N.C. 105, 414 S.E. 2d 36 (1992)
In re Martin, 333 N.C. 242, 424 S.E. 2d 118 (1993)
In re Bissell, 333 N.C. 766, 429 S.E. 2d 731 (1993)
In re Hair, 335 N.C. 150, 436 S.E. 2d 128 (1993)
In re Cornelius, 335 N.C. 198, 436 S.E. 2d 836 (1993)
In re Bullock, 336 N.C. 586, 444 S.E. 2d 299 (1994)
In re Leonard, 339 N.C. 596, 453 S.E. 2d 521 (1995)
In re Martin, 340 N.C. 248, 456 S.E. 2d 517 (1995)
In re Greene, 340 N.C. 251, 456 S.E. 2d 516 (1995)
In re Ammons, 344 N.C. 195, 473 S.E. 2d 326 (1996)
In re Fuller, 345 N.C. 157, 478 S.E. 2d 641 (1996)
In re Martin, 345 N.C. 167, 478 S.E. 2d 186 (1996)
In re Renfer, 345 N.C. 632, 482 S.E. 2d 540 (1997)

In re Renfer, 347 N.C. 382, 493 S.E. 2d 434 (1997)

In re Tucker, 348 N.C. 677, 501 S.E. 2d 67 (1998)

In re Tucker, 350 N.C. 649, 516 S.E. 2d 593 (1999)

In re Brown, 351 N.C. 601, 527 S.E. 2d 651 (2000)

In re Hayes, 353 N.C. 511, 546 S.E. 2d 376 (2001)

In re Stephenson, 354 N.C. 201, 552 S.E. 2d 137 (2001)

In re Brown, 356 N.C. 278, 570 S.E. 2d 102 (2002)

In re Hayes, 356 N.C. 389, 584 S.E. 2d 260 (2002)

In re Hill, 357 N.C. 559, 591 S.E. 2d 859 (2003)

In re Brown, 358 N.C. 711, 599 S.E. 2d 502 (2004)

In re Braswell, 358 N.C. 721, 600 S.E. 2d 849 (2004)

